

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JAMES E. EAKER,**

**Appellant,**

**v.**

**KANSAS CITY POWER & LIGHT COMPANY,**

**Respondent.**

---

DOCKET NUMBER WD77851

**Date: August 18, 2015**

---

Appeal from:  
Jackson County Circuit Court  
The Honorable Susan M. Burnett, Judge

---

Appellate Judges:  
Division Four: Alok Ahuja, C.J., P.J., Joseph M. Ellis, J. and Janet Sutton, Sp. J.

---

Attorneys:  
Russell S. Dameron, Kansas City, Mo for appellant  
Teresa M. Young and Edward W. Zeidler, St. Louis, Mo for respondent

# **MISSOURI APPELLATE COURT OPINION SUMMARY**

## **COURT OF APPEALS -- WESTERN DISTRICT**

**JAMES E. EAKER**

**Appellant,**

**v.**

**KANSAS CITY POWER & LIGHT COMPANY,**

**Respondent.**

WD77851

Jackson County

Taking the facts alleged by James Eaker as true, he was injured while repairing the boiler at Kansas City Power and Light Company's ("KCP&L") Hawthorn 5 power plant. Although he was working on KCP&L's property, at the time of his injury Eaker, a union boilermaker, was employed by Enerfab. Prior to the incident in question, KCP&L contracted with Enerfab to service and maintain the Hawthorn 5 boiler unit.

Eaker's injury occurred during an emergency boiler repair when he stepped through a gap in a walkway at a power plant. Eaker filed a civil action against KCP&L. Following KCP&L's answer, Eaker filed a Motion to Make More Definite and Certain, or In the Alternative to Strike, Portions of Defendant's Answer, challenging, among other things, the particularity with which KCP&L pleaded its affirmative defenses.

The circuit court granted summary judgment to KCP&L, finding that Eaker was a statutory employer under § 287.040.1, RSMo. Eaker appealed, challenging both the circuit court's conclusion that KCP&L had adequately pleaded an affirmative defense based on the statutory employment doctrine, and the court's ruling that the undisputed facts established KCP&L's right to summary judgment based on the defense.

Reversed.

### **Division Four holds:**

We conclude that reversal is required based solely on KCP&L's failure to adequately plead the statutory employment doctrine as an affirmative defense.

To properly plead an affirmative defense as required by Supreme Court Rule 55.08, the party asserting the defense must allege each ultimate fact necessary to make the defense applicable.

The elements required for statutory employment under § 287.040.1 are that (1) the work is performed pursuant to a contract; (2) the injury occurs on or about the premises of the alleged statutory employer; and (3) the work is in the usual course of business of the alleged statutory employer.

KCP&L failed to adequately allege either that Eaker's work was performed pursuant to a contract or that the work was in the usual course of KCP&L's business. Further, rather than statutory employment, KCP&L's relevant affirmative defense was plainly intended to invoke the independent contractor exception to a claim of premises liability.

Eaker was also not required to continue to object to the affirmative defenses stated in KCP&L's amended answer, or to file a second motion for more definite statement. Eaker requested that KCP&L plead its relevant affirmative defense with greater particularity, that motion was granted, and KCP&L provided what further factual allegations it deemed appropriate. Eaker was not required to file a successive challenge to KCP&L's pleading requesting that it assert an additional and different affirmative defense than the independent contractor exception it had clearly chosen to plead.

Before: Division Four: Alok Ahuja, C.J., P.J., Joseph M. Ellis, J. and Janet Sutton, Sp. J.

Opinion by: Alok Ahuja, Judge

**August 18, 2015**

<b>THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.</b>
--